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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,129	05/30/2006	Alberto Arozena Bergaretxe	HERR11.001APC	1369
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EXAMINER				
MALEKZADEH, SEYED MASOUD				
ART UNIT		PAPER NUMBER		
1791				
NOTIFICATION DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/581,129

Applicant(s)

AROZENA BERGARETXE ET AL.

Examiner

SEYED M. MALEKZADEH

Art Unit

1791

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/ISD)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 05/30/2006

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, recitations "upright that can be fixed or can move vertically" in the 2nd line, "a bracket arrangement that can also be fixed or move vertically" in the 3rd line, "a rocker that can act on flanges or blocks" in the 10th line, "the traversal axis that can make said axis rotate" in the 13th line, fail to particularly point out and distinctly claim the subject matter of the claim since "can" is not a positive citation and makes the scope of the claim indefinite.

Claim 1 recites the limitation "its operating position" in the 12th line. There is insufficient antecedent basis for this limitation in the claim because it is indefinite term "its" refers to the "spring" or the "rocker".

Claim 1 recites the limitation "the positions" in the 15th line. There is insufficient antecedent basis for this limitation in the claim.

In claim 2, recitation "the rocker which can transmit the corresponding stresses" in 8th line of claim 2, fails to particularly point out and distinctly claim the subject matter of the claim since "can" is not a positive citation and makes the scope of the claim indefinite.

Claim 2 recite the limitation "its two ends" in 3rd line. There is insufficient antecedent basis for this limitation in the claim because it is indefinite term "its" refers to the "rocker" or the "inclined plane".

Claim 2 recites the limitation "its position once it has passed over the flange" in 7th line. There is insufficient antecedent basis for this limitation in the claim because it is indefinite terms "its" and "it" refer to the "rocker" or the "spring".

In claim 3 recitations, "it can push one of the flanges on the upright" in 5th line, "it can rest on a flange on the upright" in 8th line of claim 3, fail to particularly point out and distinctly claim the subject matter of the claim since "can" is not a positive citation and makes the scope of the claim indefinite.

Claim 3 recites the limitation "it can push one of the flanges" in 4th line, "to raise it" in 5th line, "does not interact with it" in 6th line. There is insufficient antecedent basis for this limitation in the claim because it is indefinite terms "it" refers to the "rocker" or the "handle".

Claim 3 recites the limitation "it can rest on a flange" in 8th line. There is insufficient antecedent basis for this limitation in the claim because it is indefinite term "it" refers to the "rocker" or the "bracket arrangement".

Claim 4 recite the limitation "the working phases" in 2nd line and "the upper and lower front faces" in 3rd line. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 recites the limitation "the outer cover" in 6th line, "the neutral position" in 10th line, "the outer cover" in 14th line, "the neutral position" in 15th line. There is insufficient antecedent basis for this limitation in the claim.

In claim 6, recitations "it can push one of the flanges on the upright" in 3rd line, "it can rest on a flange on the upright" in 6th line of claim fail to particularly point out and distinctly claim the subject matter of the claim since "can" is not a positive citation and makes the scope of the claim indefinite.

Claim 6 recites the limitation "it can push one of the flanges" in 3rd and 4th line, "to raise it" in 4th line, "does not interact with it" in 5th line. There is insufficient antecedent basis for this limitation in the claim because it is indefinite terms "it" refers to the "rocker" or the "handle".

Claim 6 recites the limitation "it can rest on a flange" in 7th line. There is insufficient antecedent basis for this limitation in the claim because it is indefinite term "it" refers to the "rocker" or the "bracket arrangement".

Claims 7-9 recite the limitation "the working phases" in 2nd line. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4, 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Waldschmitt et al (US 2003/0052249)

Waldschmitt et al. ('249) teach a self-climbing concrete wall form hoist for forming a concrete wall section as a climbing apparatus for shuttering, scaffolding and loads comprising Mast (24) as an upright, Upper deck assembly (36) as a bracket arrangement, Vertical form panel (28) as shuttering structure, upper dog latch assembly (40) as an upper head, hydraulic cylinder (64), lower dog latch assembly (66) as a lower head, mounting collars (52) as upper and lower wings, channel (54) which

accommodates the forward flange of the Mast as guides, dog (56) as rocker, a plurality of spaced cleats (60) as flanges or blocks, horizontal mounting pins (58) as a traversal axis, spring (57), repositioning handle (61) as a handle, and a safety positioner, wherein the upright (24) is capable of vertical movement in relation to a wall (30) and also the bracket arrangement (36) is capable of vertical movement in relation to the wall (30) and to the upright (24). Further, shuttering structure (28) is mounted on the bracket arrangement (36), and also the upper head (40) is attached to the bracket arrangement (36) and joined to the hydraulic cylinder (64), and also a rod of the hydraulic cylinder attached to a lower head (66) in which both of said upper and lower heads have a body with upper and lower wings (52) defining between guides that encircle the upright (24). Moreover, each of the heads have a rocker (56) which act on flanges (60) distributed along the upright, and the rocker is mounted on traversal axis (58) against the action of spring (57) that acts on the rocker. Further, a handle is joined to the traversal axis to make the axis (58) rotate to change the position of the rocker (56) in relation to the upright (24 or 26), and a safety positioner device which provides limitation for the positions of the rocker (56). (See figures 1, 3a-3d, 5a-5c, 6a-6b, 7-8)

Furthermore, Waldschmitt et al. ('249) disclose the rocker (56) has a triangular form with an inclined plane that is beveled at rocker's two ends,

defining an upper face and an upper front face which form an angle of 90° and also a lower face and a lower front face which also form a 90° angle in such a way that on making contact with the flanges (60) on the upright (24), the inclined plane of the rocker tilts against the action of the spring (57). (See figures 5a-5c)

Furthermore, Waldschmitt et al. ('249) teach the climbing system raise the upright (24) and the bracket arrangement, and the upper and lower front faces of the rocker remain in contact with the surface of the upright. (See figures 5a-5c)

The prior art, thus, meets all the claim limitations, and therefore, Waldschmitt et al. ('249) anticipate the claims 1-2, 4, and 7.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a

background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3, 6, and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waldschmitt et al. ('249) in view of Schworer (US 5,000,287).

Waldschmitt et al. ('249) teach all the structural limitations of a climbing system for shuttering, scaffolding and loads as discussed above. Furthermore, Waldschmitt et al. ('249) discloses the dog (56) pivot between a first position and a second position by a repositioning handle (61) (See paragraph [0023]) including a position for raising the upright (24) wherein the upper face of the rocker is in a horizontal position in which that rocker push one of the flanges (14) on the upright (24) upwards to raise climbing system, and a position for raising the bracket arrangement wherein the lower face of the rocker (56) is in a horizontal position in which rocker (56) can rest on a flange (60) on the upright (24) to help raise bracket arrangement. (See paragraph [0031]). Waldschmitt et al. ('249), also teach the climbing system raise the upright (24) and the bracket arrangement,

and the upper and lower front faces of the rocker remain in contact with the surface of the upright. (See figures 5a-5c)

However, Waldschmitt et al. ('249) is silent about defining three operating positions for rocker including a neutral position for rocker wherein rocker does not interact with the upright, as claimed in claims 3 and 6.

In the analogous art, Schworer ('287) teaches a displaceable platform apparatus wherein the apparatus include at least two carrier rails (13) which are arranged spaced apart alongside one another and which extend along the wall (12), at least one displaceable bracket arrangement (14), a scaffold (14a), a displacement mechanism (17) including two slide shoes (17a, 17b), pivot levers (39 and 40) which are associated with toggle levers (41 and 42), respectively, and in combination form a pair of handles which are connected to the slide shoes (17a, 17b), and carrying spigots (43, 44) as rockers which can engage with a plurality of tooth recesses (49) formed on left hand side web (13") of the carrier rail (13) which are in a way that one of the carrier spigots (43 or 44) carries the associated slide shoe (17a) or (17b).

Also, Schworer ('287) teaches Pivot levers (39 and 40) associated with toggle levers (41, 42) have three operating position to determine movement of the displacement mechanism (17) comprising a dead center position as a neutral position for the pulling device back in which displacement

mechanism (17) do not engage with the supports (14"), a position for inclining of and a position for raising the scaffold (14a), and a position for raising bracket arrangement (14). (See lines 17-60, column 3; lines 39-68, column 8; and lines 1-38, column 9)

Therefore, it would have been obvious for one of ordinary skill in the art at the time of applicant's invention to modify climbing system of Waldschmitt et al. ('249) by including a neutral position for the rocker's movement in such a way that rocker does not interact with the upright in order to provide a free vertical movement of the upper and lower heads on the upright to adjust the climbing system according to the position of the upright and bracket arrangement, as suggested by Schworer ('287).

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waldschmitt et al. ('249) in view of Blaive et al. (EP 0155217)

Waldschmitt et al. ('249) teach all the structural limitations of a climbing system for shuttering, scaffolding and loads as discussed above. Furthermore, Waldschmitt et al ('249) disclose a safety positioner to limit the position of the rocker; however, prior art is silent about the structure of the safety positioner comprising an inner disc including a groove, spring positioner, and outer cover with three holes or recesses in such a way that the tilting movement of the rocker is limited when the spring positioner

abuts against one of the edges of the groove in the inner disc, as claimed in claim 5.

In the analogous art, Blaive et al. ('217) teach a safety positioner comprises an inner disk (46a) that is capable of moving with the movement of a chain pulley (44) and include peripheral notches that define grooves, which work with a plurality of spring positioners (51). Further, prior art teaches depending on the operating position of the outer cover (50a), the rotation of the pulley (44) is controlled in such a way that the rotation of the chain pulley (44) is limited when the spring positioner abuts against one of the grooves in the inner disk (46a). Further, Blaive et al. ('217) teach in a limiting position, the inner disk (46a), the outer cover (50a), the recesses of the outer cover (50a), and the springs (51) provide an engaging position to limit the rotation of the pulley (44) and in a neutral position, the inner disk (46a) and outer cover (50a), the recesses and springs (51) are free of engaging, and therefore, no limitation is applied for the movement of pulley (44). (See abstract and figures 2a and 2c)

Also, Blaive et al. ('217) teach the benefits of a safety positioner device as disclosed in order to improve the reliability of the climbing system and also to avoid spurious shutdowns of the elevating lifting device. (See page 2, first paragraph)

Therefore, it would have been obvious for one of ordinary skill in the art at the time of applicant's invention to modify teachings of the Waldschmitt ('249) by providing a safety positioner structure which include an inner disc including a groove, spring positioner, and outer cover with three holes in order to improve the reliability of the climbing system and also to avoid spurious shutdowns of the elevating lifting device, as suggested by Blaive et al ('217).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seyed Masoud Malekzadeh whose telephone number is 571-272-6215. The examiner can normally be reached on Monday – Friday at 8:30 am – 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin, can be reached on (571) 272-1189. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status

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information for published application may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance form a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. M. M./

Examiner, Art Unit 1791

/Steven P. Griffin/

Supervisory Patent Examiner, Art Unit 1791